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In re Application of
Robert J. McMorrow, et al.
Application No. 10/055,577
Filed: January 23, 2002
For: **EDGE POWER
DETECTOR/CONTROLLER**

**ACCEPTANCE
OF PAPERS**

This is a decision responsive to the communication filed April 05, 2006 requesting acceptance of an Amendment/Response and Extension of Time as originally filed on April 16, 2005. This decision is also responsive to the request for refund filed April 5, 2006.

Applicant asserts that an Amendment/Response to a Notice of Non-Compliant Amendment and an Extension of Time for three months were timely filed via the U.S. Postal Service using first class mail on April 14, 2005. Applicant has also provided a copy of a date-stamped postcard evidencing receipt of these items by the US PTO on April 18, 2005 (certificate of mailing dated April 14, 2005) and also asserts that their check has been cashed.

A review of the file does not find the original submission; however, a review of the PTO Revenue and Accounting Management (RAM) system does find that the Office received and processed the check in the amount of \$1020.00 on April 18, 2005. Therefore, it is presumed that the original submission was received by the Office, but lost. A further review of the file finds that the three month extension of time was not sufficient to make the response timely; however, applicant did provide an authorization to charge their deposit account for any insufficient fees. Since the Notice of Non-Compliant Amendment was mailed on October 21, 2004, applicant needed a 5 month extension of time in order for the April 14, 2005 response to be considered timely. Therefore, the Office has charged applicant's deposit account the necessary additional 2 months extension of time. Accordingly, the resubmission dated April 5, 2006 is accepted in view of the evidence showing that the original submission (taken together with the three month extension of time fee paid by check and the additional 2month extension of time charged to applicant's deposit account) was timely filed. The Office sincerely apologizes for any inconvenience to applicant.

However, the request to refund the \$1020.00 three month extension of time fee is denied.

Applicant's request for refund states that the Office communication mailed October 24, 2004 was not received by applicant's representatives until March 21, 2005; and therefore asserts that the delay in response was unavoidable and not due to any fault on the part of applicant or applicant's representatives. Applicant's request appears to be a request to reset the period for response to run from the date of March 21, 2005; the date the Office communication was actually received.

Applicant's attention is directed to MPEP 710.06 which states:

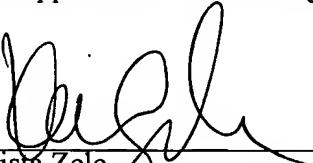
"The Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when the following criteria are met:

- (A) **the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;**
- (B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and
- (C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) **a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.**"

Applicant failed to timely file a petition within two weeks of the date of receipt of the Notice of Non-Compliant Amendment. Furthermore, applicant failed to include necessary evidence such as a copy of the envelope that contained the Office action and/or a statement explaining how the evidence establishes the date of receipt of the Office action at the correspondence address. Accordingly, the request was not timely since it was filed more than three weeks after the March 21, 2005 date of receipt, it did not include the necessary petition fee, and also because it did not include necessary evidence for establishing that the period for response should be reset.

Accordingly, the April 5, 2006 resubmission of the original response filed April 14, 2005 is **ACCEPTED** as timely filed and the request for refund is **DENIED**.

The application file is being forwarded to the Examiner for appropriate action in due course.



Krista Zele
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Communications